REMARKS

Claims 1-4, 6-8 and 39-42 are pending in this Application. Claims 5, 9-38 and 42 have been canceled without prejudice. In the Office Action mailed December 8, 2006, the Examiner:

- rejected Claims 1-4, 6-8 and 39-41 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-52 of U.S. Patent No. 6,676,745 (Merkley et al.; herein "Merkley"), Claims 1-78 of U.S. Patent No. 6,346,146 (Duselis et al., herein "'146 patent"), Claims 1-72 of U.S. Patent No. 6,506,248 (Duselis et al., herein "'248 patent") in view of Babachev et al. (Abstract only, herein "Babachev");
- rejected Claims 1-4, 6-8 and 39-41 under 35 U.S.C. 103(a) as being unpatentable over Johnstone et al. (U.S. Patent No. 4,548,676; herein "Johnstone") or Naji et al. (U.S. Patent No. 6,030,447; herein "Naji") alone or in view of Babachev and Jardine et al. (U.S. Patent No. 6,346,146; herein "Jardine").;
- rejected Claims 1-4, 6-8 and 39-41 under 35 U.S.C. 112, second paragraph for being vague and/or indefinite.

Obviousness-type Double Patenting

On page 2 of the Office Action, the Examiner rejected Claims 1-4, 6-8 and 39-41 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-52 of Merkley, Claims 1-78 of the '146 patent, and Claims 1-72 of the '248 patent in view of Babachev. The Examiner states that the "primary references do not teach the use of a quaternary amine dispersant as is now claimed in independent claim 1." Applicants

agree with this statement. The Examiner then states, "the use of a known or conventionally used or commonly used dispersant or plasticizer would have been an obvious design choice for one of ordinary sill in the art." Applicants strongly disagree that one of ordinary skill in the art, on their own, would apply a teaching of Merkley--for a sizing agent in an invention for a cellulose fiber reinforced cement composite material--with a teaching from Babachev, a reference that teaches nothing about fibers, nothing about pre-treating fibers and merely suggests a plasticizer and water-reducing agent may be used in a cement paste or concrete. Cement paste and concrete is not a building material having cellulose fibers. Furthermore, Babachev does not even describe what effect the quaternary amine has on the cement paste or concrete formulation, except that the amine "considerably increased the strength after 20 and 60 days," which is not a primary objective of Merkley. Accordingly, there is no suggestion or motivation to combine Merkley--in which treating of cellulose fibers with a sizing agent are required--with Babachev that merely teaches adding a quaternary amine to a dry cement formulation and does not teach anything about fibers or pretreating fibers. Applicants can find no suggestion or motivation to combine such opposed reference teachings and there is certainly no reason for one of ordinary skill to combine such different teachings. Applicants point out that the mere fact that one could combine parts of one or more reference teachings to meet some term of a claim is not, on its own, sufficient to support a finding of obviousness. The prior art must provide motivation or reason for one of ordinary skill in the art to make the necessary combination and none exists.

Applicants also disagree that there would be any suggestion or motivation to combine the '146 patent or the '248 patent with Babachev. The '146 patent and the '248 patent teach methods and formulations for cementitious products, the formulation including a low density calcium silicate hydrate and a siliceous reactant material. The '146 patent and the '248 patent teach noting about pretreating fibers or pretreating them with a quaternary amine. Babachev teaches nothing about fibers or pretreating fibers with a quaternary amine. Accordingly, there is no suggestion or motivation to combine the '146 patent or the '248 with Babachev. As such and for the reasons set forth above, none of the references, Merkley, the '146 patent and the '248, alone or in view of Babachev are obvious over Applicants' claimed invention. Applicants respectfully request the rejection on the ground of nonstatutory obviousness-type double patenting be removed.

Claims rejection under 35 U.S.C. 103(a)

On page 4 of the Office Action, the Examiner rejected Claims 1-4, 6-8 and 39-41 under 35 U.S.C. 103(a) as being unpatentable over Johnstone or Naji alone or in view of Babachev and Jardine. Applicants' disagree with the stated rejection for the following reasons. Johnstone teaches a paper-making process using cellulose fibers in an amount of 65% to 90%. With the paper product the Examiner refers to on page 5, Johnstone requires a binder which is a latex binder and a filler of calcium sulfate dehydrate (gypsum), which does not make a cementitious binder and an aggregate as claimed by Applicants. Johnstone does not teach or suggest a building material of a cementitious binder and an aggregate and there is no motivation in Johnstone or for one of ordinary skill in the art to alter Johnstone's invention for making paper and provide Applicants' claimed invention.

Applicants have shown that Johnstone does not teach Applicants' invention on its whole or each and every element of the claimed invention. As such, Johnstone is not obvious over Applicants' claimed invention.

Naji teaches a dry formulation for preparing an autoclave-cured product. Naji's dry formulation does not require fibers; however, if included, fibers of any type may be used. Naji does not expressly or implicitly teach anything about pre-treating any of its fibers, if used. In fact, with regard to the fibers, Naji only teaches a preferred concentration of fibers in the dry formulation. Naji also does not require a plasticizer or dispersant in its dry formulation. When or if a plasticizer or dispersant is included, Naji clearly states that the plasticizer or dispersant would be contained in the dry formulation and not used to pre-treat fibers. As such, Applicants have shown that Naji does not teach Applicants' invention on its whole or each and every element of the claimed invention. And because there is no teaching of pre-treating cellulose fibers in a dry formulation of Naji and because there is also no suggestion or motivation in Naji to pre-treat the dry formulation or the cellulose fibers, Naji is not obvious over the claimed invention.

Regarding the Examiner's suggestion that it would have been an obvious design choice for one of ordinary skill in the art to add more than one reinforcing agent or more than one dispersing agent type, Applicants submit that the mere fact that a worker in the art could rearrange or add parts to meet the terms of the claims is not by itself sufficient support for a finding of obviousness. Applicants have in their response to rejections using Johnstone or Naji shown factually that such a rearrangement or addition of parts is not obvious. Furthermore, the prior art

must provide a motivation or reason for the worker in the art, without the Applicants' disclosure, to make the necessary changes in the reference to provide Applicants' claimed invention. And there is none, as pointed out.

Applicants further submit that because the claimed invention is not obvious over Johnstone or Naji and because Johnstone and Naji teach very different inventions from the claimed invention, there is no suggestion or motiviation to combine these very different inventions with either Babachev or Jardine. And, neither Babachev or Jardine provide the features explicitly lacking in Johnstone and Naji. For example, Babachev teaches nothing about the use of a quaternary amine for pre-treating fibers. In fact, Babachev teaches nothing about fibers at all or having any in a concrete formulation. Babachev merely teaches that a quaternary amine may act as a plasticizer for concrete. Similarly, Jardine teaches nothing about the use of a quaternary amine for pre-treating fibers. Jardine also teaches nothing about fibers at all or about having any fibers in its described clay concrete. Jardine merely teaches a dry formulation for clay concrete that may include a quaternary amine useful as a clay modifying agent when preparing the concrete. Therefore, because Johnstone teaches nothing about concrete (nor a quaternary amine in concrete) or a cementitious binder and an aggregate, there is no suggestion or motivation to combine Johnstone with Babachev or Jardine, which are both solely based on teachings of concrete formulations and suitable plasticizers or modifying agents. The references themselves certainly provide no motivation or suggestion to combine teachings and there is no reason for one of ordinary skill in the art to arbitrarily combine the teachings. There is also no reason to combine Johnstone with Babachev or

Jardine to arrive at Applicants claimed invention of a building product with a cementitious binder and an aggregate and cellulose fibers treated with a quaternary agent because the combination together does not teach this. The lack of suggestion or motivation to combine shows that the combined references are not obvious over the claimed invention. Furthermore, the combined references do not teach each and every element of Applicants' claimed invention.

Similarly, Naji teaches only a dry formulation and nothing about pre-treating fibers. Babachev teaches nothing about pre-treating fibers or teaches about fibers at all and merely teaches that a quaternary amine may act as a plasticizer for concrete. Jardine teaches nothing about the use of a quaternary amine for pre-treating fibers and teaches nothing about fibers at all. Accordingly, there is no suggestion or motivation to combine the reference teachings, either in the references themselves, or to one of ordinary skill in the art, in order to arrive at Applicants claimed invention of a building product with a cementitious binder and an aggregate and cellulose fibers treated with a quaternary agent. The lack of suggestion or motivation to combine shows that the combined references are not obvious over the claimed invention. Furthermore, the combined references of Naji in view of Babachev and Jardine do not teach each and every element of the claimed invention. Applicants respectfully request the Examiner remove the rejection to the claims as being unpatentable over Johnstone or Naji alone or in view of Babachev and Jardine.

Applicants also respectfully request entry and allowance of amended Claims 1 and 41, amended in accordance with recommendations set forth by the Examiner in the Office Action

dated December 8, 2006. Applicants wish to the thank the Examiner for these suggestions. No new matter has been introduced with these amendments to the claims.

CONCLUSION

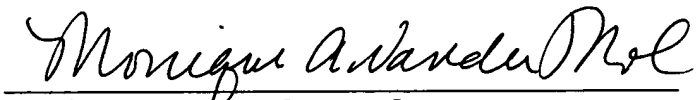
Applicants respectfully submit that the Application is in condition for allowance, and pursuant to the filing of this Amendment, earnestly seeks such allowance of Claims 1-4, 6-8 and 39-41 as presented in the listing of claims beginning on page 3 of this paper. Should the Examiner have questions, comments or suggestions in furtherance of the prosecution of this Application, please contact Applicants' representative at 214.999.4330. Applicants, through their representative, stand ready to conduct a telephone interview with the Examiner to review this Application if the Examiner believes that such an interview would assist in the advancement of this Application.

To the extent that any further fees are required during the pendency of this Application, including petition fees, the Commissioner is hereby authorized to charge payment of any additional fees, including, without limitation, any fees under 37 C.F.R. § 1.16 or 37 C.F.R. § 1.17, to Deposit Account No. 07-0153 of Gardere Wynne Sewell LLP and reference Attorney Docket No. 129843-1051. In the event that any additional time is needed for this filing, or any additional time in excess of that requested in a petition for an extension of time, please consider this a petition for an extension of time for any needed extension of time pursuant to 37 C.F.R. § 1.136 or any other section or provision of Title 37. Applicants respectfully request that the Commissioner grant any such petition and authorize the Commissioner to charge the Deposit Account referenced above. Please credit any overpayments to this same Deposit Account.

This is intended to be a complete response to the Office Action mailed December 8, 2006.

Please direct all correspondence to the practitioner listed below at Customer No. 60148.

Respectfully submitted,



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